

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1268

Introduced by

Representative Keiser

1 A BILL for an Act to create and enact a new subsection to section 47-02-27.4 and two new
2 sections to chapter 47-02 of the North Dakota Century Code, relating to exclusions from the
3 statutory rule against perpetuities and restrictions on irrevocable trusts; and to amend and
4 reenact section 47-02-27.1 of the North Dakota Century Code, relating to the rule against
5 perpetuities.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 47-02-27.1 of the 1997 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 **47-02-27.1. Statutory rule against perpetuities - Invalidity of certain contingent**
10 **property interests, general powers of appointment, special powers of appointment, and**
11 **general testamentary powers of appointment.**

- 12 1. A contingent property interest is invalid unless:
- 13 a. When the interest is created, it is certain to vest or terminate no later than
- 14 twenty-one years after the death of an individual then alive; or
- 15 b. The interest either vests or terminates within ninety years after its creation.
- 16 2. A general power of appointment not presently exercisable because of a condition
- 17 precedent is invalid unless:
- 18 a. When the power is created, the condition precedent is certain to be satisfied
- 19 or to become impossible to satisfy no later than twenty-one years after the
- 20 death of an individual then alive; or
- 21 b. The condition precedent either is satisfied or becomes impossible to satisfy
- 22 within ninety years after its creation.
- 23 3. A special power of appointment or a general testamentary power of appointment is
- 24 invalid unless:

a. When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one years after the death of an individual then alive; or

b. The power is irrevocably exercised or otherwise terminates within ninety years after its creation.

4. In determining whether a contingent property interest or a power of appointment is valid under subdivision a of subsection 1, subdivision a of subsection 2, or subdivision a of subsection 3, the possibility that a child will be born to an individual after the individual's death is disregarded.

5. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument seeks to disallow the vesting or termination of any interest or trust beyond, seeks to postpone the vesting or termination of any interest or trust until, or seeks to operate in effect in any similar fashion upon, the later of (a) the expiration of a period of time not exceeding twenty-one years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (b) the expiration of a period of time that exceeds or might exceed twenty-one years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds twenty-one years after the death of the survivor of the specified lives. This subsection applies only to a trust or other property arrangement that owns or acquires real property in this state.

SECTION 2. A new subsection to section 47-02-27.4 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

An irrevocable trust regardless of when or how the trust was created or when the trust became irrevocable other than a trust that owns or acquires real property in this state.

SECTION 3. A new section to chapter 47-02 of the North Dakota Century Code is created and enacted as follows:

Restriction on ownership of real property by trusts. A trustee of an irrevocable trust organized under the laws of any state may not, directly or indirectly, retain any interest, whether legal, beneficial, or otherwise, in any title to real property in this state beyond the period of time

1 specified in subsection 5 of section 47-02-27.1. This section applies to trust ownership of real
2 property in this state regardless of the means by which the real property is acquired by the trust
3 and regardless of when or how the trust was created or when the trust became irrevocable.

4 **SECTION 4.** A new section to chapter 47-02 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Enforcement.** If the attorney general has reason to believe that any trustee is violating
7 section 3 of this Act, the attorney general shall commence an action in the district court in which
8 any real property relative to the violation is situated, or if situated in two or more counties, in the
9 district court for that county in which a substantial part of the real property is situated. The
10 attorney general shall file for record with the register of deeds in each county in which any
11 portion of the real property is located a notice of the pendency of the action. If the court finds
12 that the real property in question is being held in violation of section 3 of this Act, the court shall
13 enter an order so declaring. The attorney general shall file the order for record with the register
14 of deeds of each county in which any portion of the real property is located. The trustee owning
15 the real property has a period of one year from the date of the order to divest the trust of the
16 real property. The one-year limitation period is deemed a covenant running with the title to the
17 real property against any grantee or assignee. Any real property not divested within the time
18 prescribed must be sold at public sale in the manner prescribed by law for the foreclosure of a
19 real estate mortgage by action.